Supreme Court, U.S.
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No. 93-679

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1993

CONSTANTINE STASSIS,

Petitioner,

vs.

LILLITH JOY HARTMAN AND
RHEA ROBIN HARTMAN, MINORS,
BY THEIR NEXT FRIEND
JANET HARTMAN,

Respondents.

On Petition For A Writ of Certiorari
To The Supreme Court Of Iowa

# RESPONDENT'S BRIEF IN OPPOSITION

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## QUESTIONS PRESENTED FOR REVIEW

1. Whether the methods available for determining paternity, in Iowa, violate the Equal Protection Clause of the Fourteenth Amendment or due process of law.

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## OPINION BELOW

The opinion of the Iowa Court of Appeals is found at Hartman v. Stassis, 504 N.W.2d 129 (Iowa App. 1993). On July 30, 1993, the Iowa Supreme Court denied Stassis' Petition for Further Review. (Page 13 of the Appendix to Petitioner's Petition for Writ of Certiorari) The Trial Court filed its Findings, Conclusions and Decree on July 31, 1991. (Pages 20-29 of the Appendix to Petitioner's Petition for Writ of Certiorari)

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fourteenth Amendment to the United States Constitution provides in relevant part:

> . . . No state shall . . .deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Chapter 675 - Paternity of Children and Obligation for Support - Iowa Code (1991) (Appendix to Petition for Writ of Certiorari, pp. App. 48-50).

3. Chapter 252A - Uniform Support of Dependents Law - Iowa Code (1991) (Appendix to Petition for Writ of Certiorari, pp. App. 50-53).

## STATEMENT OF THE CASE

The facts of this case are neither unprecedented nor unusual, and present no issues of constitutional magnitude.

Respondent, Janet Hartman, is the mother of two children, Lillith, born April 3, 1981, and Rhea, born April 19, 1985. On July 21, 1989, Janet filed a petition under Iowa's Uniform Support of Dependents Law, Chapter 252A of the Iowa Code. She sought to have blood tests to establish paternity and ultimately sought child support from

Stassis.

Under the Uniform Support of Dependents Law, there is no provision for a jury trial. Stassis, however, sought to have a trial by jury and was denied by the trial court. This is a primary area of contention by Stassis.

Janet alleged in her petition that Stassis was the father of her two children. Blood testing was done at the Iowa Methodist Medical Center in Des Moines, Iowa. The testing that was done is HLA testing, where the pathologist identifies certain markers on the surface of white and red blood cells. This type of testing is used in matching tissue for organ donation and transplantation.

Once all markers are identified, the markers of the child are compared with those of the mother to determine which markers genetically came from the mother.

If a child has a marker not found in the mother, it must be found in the father. If the tested man does not have such a marker, he is conclusively excluded as the father of the child. At trial, Stassis did not contest this portion of the blood testing and agreed that he was not excluded as the father of either child.

Once an individual is not excluded as a father, a series of calculations are performed to determine the likelihood of paternity. Prior to performing the calculations, several assumptions must be made. 1) the mother is the biological mother of the child; 2) intercourse occurred between the parties at an appropriate time before birth; 3) the alleged father is not sterile; 4) no party tested had a blood transfusion within three months before testing; 5) Neither the man or woman are related in the first degree.

Evidence produced at trial led the trial court to conclude that all assumptions made by the pathologist were valid.

It is generally accepted by pathologists that certain groups of genetic markers on blood cells, or antigen pairs, appear with certain levels of frequency in racial population. Statistical tables have been developed by pathologists and hematologists, and such tables are relied upon by such experts as they compute the probability of paternity. It is not necessary to set forth in this resistance to the Petition for Certiorari the method of computation. Stassis, at trial, disputed the methods of computation, but the trial court, following a long line of judicial precedent, and weighing the testimony of the pathologist, accepted the testing. Bases upon the tests, the results showed that both children, Lillith and

Rhea, were fathered by Stassis. The probability of paternity of Stassis with Lillith was 99.89%, and with Rhea was 99.99%.

The trial court, however, did not base its decision solely upon the testing results, although courts have held that such results are highly probative on the issue of paternity. Under Iowa law, test results are considered along with "other available evidence" in determining paternity. See, Iowa Code § 675.41 (1991). The trial court considered other evidence and found that Stassis was the father of both children.

The primary factual issue of contention raised by Stassis at trial, in addition to his opinion on the computation used by the pathologist, was that he did not have intercourse at the appropriate time to father these children. In his

Petition for Writ of Certiorari, he states

> "[H]e established, in spite the long passage of time, that he was not in the state during the mother's conception." (Petitioner's Brief, P. 5)

However, this statement is untrue and not supported by the record. Stassis testified that he had a sexual relationship with Janet beginning in 1979. He initially described his relationship with her as a "sporadic, casual relationship". He went on to state, on the record and in open court:

> "I had several casual relationships with other women, other couples I was seeing sporadically in the same way I saw Hartman except that I never had with them in the case of a women a sexual relationship." (Trial Transcript, p. 243)

His sexual relationship with Janet, beginning in 1979, two years before the birth of Lillith, ended in 1986, one year after the birth of Rhea, all according to the testimony of Stassis at trial. He

could not conclusively rule out sexual contact with Janet in 1980 and 1984, the years of conception of the children.

Based upon the evidence, the court found Stassis to be the father of both children, and set child support accordingly.

## ARGUMENT

### I. THERE IS NO DENIAL OF EQUAL PROTECTION UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION OR GENDER-BASED DISCRIMINATION BY THE STATE COURTS IN DENYING STASSIS A JURY TRIAL ON THE ISSUE OF PATERNITY.

The principle legal issue raised by Stassis is the fact that he was not afforded a jury trial in this matter. In Iowa, there are several ways to address paternity. Chapter 675, an action at law, which addresses paternity determinations, is one of the older remedies. In an action under this statute, a jury trial is

provided. Iowa Code §675.18 (1991)[1]. More recently, the Uniform Support of Dependents Act, Chapter 252A, was enacted. This is an action in equity and a trial by jury is not provided. Paternity may also be addressed in other proceedings, such as divorce actions. See, In RE: Marriage of Stogdill, 428 N.W.2d 667 (Iowa 1988). In such actions, there is no trial by jury.

The Iowa Supreme Court has addressed the issues raised by Stassis at length in the cases of Greenstreet v. Clark, 239 N.W.2d 143 (Iowa 1976), and State ex rel. Bishop v. Travis, 306 N.W.2d 733 (Iowa 1981).

In Greenstreet, the Iowa Court first addressed whether paternity could be

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[1] Chapter 675 of the Iowa Code was moved in 1993, and is now found in Chapter 600B. However, the substance of Chapter was unchanged. Reference will continue to be to Chapter 675, as it was the statute in question at the time of these proceedings.

addresses in a child support action brought under Chapter 252A, and whether a jury trial may be allowed in such a proceeding. The Court observed that in jurisdictions considering whether paternity may be decided under comparable URESA [Uniform Reciprocal Enforcement of Support Act] laws, more have allowed paternity determinations that not. In light of Iowa Code §252A.9, providing that "this Chapter shall be so interpreted to make uniform the law of the States which enacted it", the court held that the paternity issue was proper for consideration under Chapter 252A proceedings. Greenstreet, 239 N.W.2d at 147.

The Greenstreet court next considered whether a jury trial right existed under Chapter 252A proceedings. The court noted under Iowa Code §252A.6(1) (1991), the state legislature mandated such proceedings

be commenced "by filing a verified petition in Equity". Id., at 148. The court also adhered to long standing principles, which provided that:

> "[W]here an action is properly brought in equity the Defendant has no right to a trial by jury of law issues presented in the answer, and the Court will retain jurisdiction and determine the legal issues presented."

Id. The court also noted:

> ". . .[O]nce equity has obtained jurisdiction of a controversy it will determine all questions material or necessary to accomplish full and complete justice between the parties, even though in doing so it may be required to pass upon some matters ordinarily cognizable at law.

Id.

The Iowa court next looked at the relationship between Chapter 675, "Paternity of Children and Obligation for Support", and Chapter 252A, "Uniform Support of Dependents Law", in State ex rel. Bishop v. Travis, 306 N.W.2d 733 (Iowa 1981). The issue in that case was the same

issue raised by Stassis herein, whether the denial of the right to a jury trial under Chapter 252A, when contrasted to the right granted under Chapter 675, is a denial of equal protection of laws. Id., at 734.

In comparing the two statutes, Bishop held that the two chapters cover the same ground only in part. The essential function of the older Chapter 675 is to establish a parent-child relationship. Id., at 735. The Iowa Supreme Court further held:

> "There was specific differences between the two chapters which, while perhaps not controlling, indicate that they have differing ranges. For example, Chapter 675 obligates only mothers and fathers; Chapter 252A obligates others as well, such as spouses, grandparents and grandchildren.
>
> Seen in this light, the State can claim a legitimate interest in providing a nonjury proceeding in a Chapter 252A proceeding. As explained in State of Colorado v. Brammer, 301 N.W.2d 715 (Iowa 1981), the system under the Chapter presupposes the sending back the initiating state the

information gathered in the responding state. There is a provision whereby the initiating state can in turn gather further evidence to be forwarded to and considered by the Court in the responding state. It becomes much more difficult to present the question to a jury under such a procedure.

In refusing to provide a jury under the uniform act the legislature might well have had an eye on section 252A.13 under which public funds become involved by way of assignment for public support. The need for the public to have an efficient collection system to reimburse for public funds expended takes on considerable significance as those obligated moved from one state to another.

Of course this proceeding, like many brought under Chapter 252A, is not interstate. Iowa could have elected to enforce support under the old chapter, thus according respondent a right to a jury. But we think the legislature had the right to provide a nonjury system available for both interstate and intrastate actions. The theory of Chapter 252A is that needs should be met promptly for dependents -- where they are -- and should be enforced against those obligated -- whether they might be found.

We believe the legislature acted within its authority, under the rational basis test, in concluding that a jury trial might be allowed for a traditional paternity action and yet deny for a paternity question in a

proceeding under Chapter 252A."

Id., at 735-736.

Stassis overlooks the fact that the jury trial "right" at issue here in a paternity case is not to be confused with a right to a trial by jury a guaranteed in a criminal case. The jury trial right in a paternity case arises only by statute. Consequently, the level of scrutiny to be applied in an equal protection challenge is the rational basis test. In Bishop, the Iowa court held:

> "A right to a jury trial, if it arises only by virtue of statute, is not fundamental. The first question then is whether a right to a jury trial on a particular controversy existed at common law. Iowa National and Mutual Insurance Co., et al v. Mitchel, 305 N.W.2d 733, 734 (Iowa 1981). Paternity Proceedings are entirely statutory. 10 C.J.S. Bastards, §32, p.144. We have never considered our statute to be criminal in nature. Holmes v. The State, 2 G. Green 501 (1850). We therefore believe the rational basis test, not strict scrutiny, should be applied. It is not, as respondent suggests, a

> question involving a fundamental right of family."

Id., at 734.

The nature of the burden upon one attacking a statute on equal protection grounds depends upon whether the classification is one subject to close judicial scrutiny or traditional equal protection analysis. Since the Petitioner, Stassis, in this case possesses no fundamental right to a jury trial, it is subject to the traditional equal protection standard. See, Frontiero v. Richardson, 411 U.S. 677, 681, 93 S.Ct. 1764, 1768, 36 L.Ed.2d 583, 589 (1973). Under that test the classification must be sustained unless it is patently arbitrary and bears no rational relationship to a legitimate governmental interest. Id. It does not deny equal protection simply because in practice it results in some inequality.

The classification will be upheld if any state of facts reasonably can be conceived to justify it. Dandridge v. Williams, 397 U.S. 471, 485, 990 S.Ct. 1153,1161, 25 L.Ed.2d 491,501-502 (1970). Wide discretion is afforded legislatures.

Stassis further raises a claim that the system creates an impermissible gender-based classification" and is thus a violation of equal protection. As such, he seeks to invoke heightened scrutiny. Stassis has not addressed this supposed classification sufficiently to sustain his burden to meet an equal protection challenge. Simply because a woman commenced a lawful paternity action against Stassis, a man, does not create an impermissible classification warranting an equal protection challenge. His focus on the fact that here, the woman chose the forum ignores the fact that nothing in the

statute mandates that paternity actions may be brought only by women. If a man brings a paternity action, he may also decide under which statute to proceed. This simply scenario negates completely his equal protection challenge on a gender-based classification.

## II. THERE IS NO VIOLATION OF DUE PROCESS IN A PATERNITY PROCEEDING WHERE BLOOD TESTING IS ALLOWED.

In Brief Point II of Stassis' Petition for Writ of Certiorari, he raises a due process challenge based on the trial courts use of paternity blood testing. He goes on at length about his disagreements over the methods used by pathologists in arriving at the probability of paternity. However, his argument goes only to the weight a court may give to such evidence. His challenge is not one of due process and fails on its face.

## III. PETITIONER'S ARGUMENTS UNDER EQUAL PROTECTION IN BRIEF POINTS III AND IV DO NOT STATE A VALID EQUAL PROTECTION CHALLENGE.

In Brief Points III , Stassis claims his rights to equal protection under law were violated because Iowa is "forcing men who are certain that they are not the fathers to support the children of women, but not requiring from these women to work to support their children, even if they are capable and highly qualified to be gainfully employed." In Brief Point IV, he claims that Iowa, "by extending the applicability of the paternity statute to lesbian couples with established family units and thus offering incentives to a group of citizens, all women, with protected procreational and parental rights to violate by fraudulent means these same rights of another group of citizens, all men", violates equal protection.

Janet cannot deny that Stassis, at trial, made quite an issue of the fact that she had a long-time female companion, and repeatedly questioned her regarding her sexual orientation. At the same time, Stassis could not show any relevance Janet's sexual orientation had on the paternity of these children. The Iowa Court of Appeals, which rendered the opinion in this case, questioned the support of such allegations in the record. (Appendix to Petitioner's Brief, p. APP.10). The court also held:

> "More importantly, however, the overriding public policy with respect to child support is "to provide for the best interests of the children by recognizing the duty of both parents to provide adequate support to their children in proportion to their respective incomes." See Child Support Guidelines, adopted effective December 31, 1990. In is well established that parents have a legal obligation to support their children. In re Marriage of Fleener, 247 N.W,2d 219, 221 (Iowa 1976). The object and purpose of the laws governing the

> imposition of child support have authorized courts to enforce "the legal as well as moral duty of support between parent and child." In re Marriage of Carney, 206 N.W.2d 107, 112 (Iowa 1973). These principles remain the same regardless of the form of the action brought to collect it. Moen v. McNamara, 272 N.W.2d 438, 439 (Iowa 1978)."

(Appendix to Petitioner's Brief, pp. App.10-11).

Regarding Stassis' fixation of the sexual orientation of Janet, the Iowa Court of Appeals stated:

> "We can find no authority to support Stassis's suggestion that we consider the circumstances surrounding the children's conception or the lifestyle choices of the mother in determining paternity and child support."

Id. Clearly, no authority is presented in this Court to support such preposterous and outrageous claims brought by Stassis, only to avoid his legal and moral obligation to support the children he fathered. There is no equal protection or due process

violation what-so-ever.

## CONCLUSION

This case is neither unusual nor unprecedented. It represents only the last desperate attempt of a father to avoid the legal and moral responsibility to support the children he fathered. There is no constitutional questions raised and no reason for this Court to grant Certiorari. The Respondent, Janet Hartman, respectfully requests that the Petition for Writ of Certiorari be dismissed.

Respectfully Submitted
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